1725.

SUPREME COURT OF THE UNITED STATES.

No. 81.

RICHARD R. KEENE, PLAINTIFF IN ERROR,

VERSUS

JOHN McDONOUGH.

IN ERROR TO THE DISTRICT COURT OF THE U. STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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THE UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the honorable the Judge of the District Court of the United States for the Eastern District of Louisiana, having circuit powers, greeting:

Because in the record and process, and also in the rendering of judgment, in a suit wherein Richard Raynal Keene was plaintiff, and John McDonough defendant in the said court, manifest error hath intervened to the great damage of him the said Richard Raynal Keene, as hath in his

complaint been stated, and it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the said parties in this behalf; you are hereby commanded that if judgment thereof be given, then, under your seal, you distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States on the second Monday of January, 1833, at the city of Washington, being the seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness, the honorable John Marshall, Chief Justice of the Supreme Court at Washington City aforesaid, this last day of the January term of said Court, 1832, and in the 56th year of the American Independence.

BYRD B. WALLER,
Deputy Clerk of the Eastern District of Louisiana, having circuit powers to issue writs of error, &c.

The President of the United States of America to the Marshal of the Eastern District of Louisiana, greeting:

Whereas, Richard Raynal Keene having filed with the clerk of the district court of the United States for the eastern of Louisiana his petition for an appeal from a certain final decree by the said court, on the 27th day of June, 1832, in a certain suit or matter of controversy therein depending, wherein the said Richard Raynal Keene was plaintiff, and John McDonough defendant; and the said Keene having in every respect complied with the conditions upon which the said writ of error was granted, you are therefore hereby commanded to cite the said John McDonough, defendant as aforesaid, as well as in error, to be and appear before the Supreme Court of the United States, to be holden in the City of Washington on the second Monday in January next, 1833, to do, receive, and abide by what decision soever the said Supreme Court shall or may render in the premises.

Given under my hand this 30th day of July, A. D., 1832.

SAM. H. HARPER,
Judge U. S. for Louisiana.

EASTERN DISTRICT OF LOUISIANA, *ss.*

Be it remembered that, on the 13th day of April, 1832, into the district court of the United States for the eastern district of Louisiana came Richard Raynal Keene, in propria persona, styling himself a citizen of the State of Maryland, and filed his petition against John McDonough, a citizen of the State of Louisiana, as follows, to wit:

To the honorable Judge of the District Court of the United States in and for the Eastern District of the State of Louisiana:

The petition of Richard Raynal Keene, a citizen of the State of Maryland, one of the said States, respectfully sets forth that, on the 22d day of May, 1803, in virtue of a lawful purchase at public sale, duly and legally made by Don Carlos de Grand Pre, or Grand Pret, governor of the post and establishment of Baton Rouge, then under the Government of Spain, and now situated in the eastern district aforesaid, within the jurisdiction of said

court, your petitioner became the owner and proprietor of a tract of land appertaining to the "testamentaria" or successor of the deceased Poussett, of thirteen *arpens* or acres in front, and about sixty in depth, bounded by the lands of Dona Catalina Rouchon Duplantier, and of Captain Don Elias Beauregard, within about half a league, more or less, south of the fort of Baton Rouge, as will more fully appear by the annexed documents. That by said sale and purchase the legal title in and to the said land was vested in your petitioner, whereof he was never thereafter legally divested, any irregular and unlawful proceedings involving a subsequent sale of said land on the part of said governor, or for and on account of said *testamentaria*, to the contrary notwithstanding. That your petitioner, although not in law bound to account to said *testamentaria*, or any person or persons whosoever, for a greater sum than $, the price at which said land was sold to him as aforesaid, will, nevertheless, consent and agree, as he now does consent and agree, to account and pay to said testamentaria, or to any other person or persons duly qualified or authorized to receive the same, not only the said sum of $ constituting said price, but also any sum additional thereto that may or shall *in toto* be equivalent to the price of said land produced by said subsequent and illegal sale thereof, in case it shall appear on the part of said *testamentaria*, or on the part of the actual and intrusive possessor of said land; that said subsequent and illegal sale produced a higher price than was produced by the said original and legal sale made to your petitioner in the manner and at the time aforesaid. That the actual and intrusive possessor of said land holding the same in bad faith and violation of law, to the injury and in the wrong of your petitioner, is one John McDonough, a citizen of the State of Louisiana, residing within the jurisdiction of said court. Your petitioner therefore prays that the said John McDonough be cited to appear and answer this petition, and be condemned and adjudged to surrender and deliver to him (your petitioner) possession of said land, together with its appurtenances, as the lawful owner and proprietor thereof, with damages, costs, and such other relief as the nature of the case may require.

RICHARD RAYNAL KEENE, *P. P.*

Documents annexed and referred to in the foregoing petition.

A.

Copy. En Baton Rouge á los veinte y dos dias á del mes de Mayo de mil ochocientos y dos años, yo el referido gubernador procede á la continuacion de la renter de la habitacion donde hacia su residencia el difunto Don Francisco Poussett, de trece arpanes de frente, sobre sesenta de profundo, con todos sus edificios, como á media legua por de esta puerte la que se pregmó y habia quedado en el ultimo lados mil quinientos pesos por Don Louis Faure, (here follow seven pages of bids, and finally:) Quatro mil quinento y cincuento pesos por Don Richd. Rengs, á quien, siendo los tres de la tarde, ha sido remitado ha sido siendo su fiador ninguno *habiendo ofrecido el comparador* la y proteca de la misma habitacion mientra predorsca la fianza, *lo que habiendo sido aceptado* por los albeceas y defensor, como de que se obligó á pagar en Neueva Orleans, en manos de Don Thomas Durnford, los seiscientos de centa lo en cumplimento de los cendicemos para que este dicho albacea pueda con esta cantidad satisfacion los dos posesiones de D. Juan Joyce y Don Turnbull, y la primó comprador albacea

defensor y testigos. Richard Raynal Keene, Thomas Durnford, Philip Hicky, Pre. Allain, Armand Duplantier, Richard Duvall, Bernard Dentroca, Fergus Duplantier, Francisco Miranda, Juan Peret, Carlos de Grand Pre.

I certify the foregoing to be a true extract of the original adjudication on file in my office. In witness whereof, I have hereunto set my hand and public seal at Baton Rouge, this 16th of May, 1832.

A. TESSIER, *P. Judge.*

The following is the citation issued agreeably to the prayer contained in the conclusion of the foregoing petition, to wit:

The President of the United States of America to the Marshal of the Eastern District of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded to cite John McDonough, so that he be and appear at the district court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans on the third Monday of May next; and that he do file his defence or answer with the clerk of said court on or before the same, or judgment will be given against him by default, and have you then and there this writ.

Witness, the honorable Samuel H. Harper, Judge of the said court at the city of New Orleans, this 13th day of April, 1832, and 56th year of the independence of the United States.

BYRD B. WALLER, *Deputy Clerk.*

Marshal's return.

Received 14th April, 1832. Served personally on the defendant copy hereof, and copy of petition the same day, and returned this original into court.

JOHN NICHOLSON, *U. S. Marshal.*

14th *April*, 1832.

In obedience to the foregoing citation, the said John McDonough, afterwards, to wit, on the 19th May, 1832, into the said court came, by his attoney, and to the plaintiff's petition filed his plea and answer as follows, to wit:

To the honorable Samuel H. Harper, Judge of the District Court of the United States in and for the Eastern District of Louisiana:

The answer and plea of John McDonough, a resident of the parish of Orleans, and citizen of the State of Louisiana, to the petition of Richard Raynal Keene, styling himself a citizen of the State of Maryland, shows that this honorable court cannot take jurisdiction of this cause, because the said Richard Raynal Keene is not a citizen of the State of Maryland, but a citizen of the State of Louisiana, and of which said State of Louisiana your respondent is also a citizen. Wherefore, he prays judgment whether this court will take jurisdiction herein, and that the fact of the citizenship of said Richard Raynal Keene be inquired into by the country, &c. &c.

T. F. & T. H. McCALEB,
Attorneys for John McDonough.

To the honorable Samuel H. Harper, Judge of the District Court of the United States in and for the Eastern District of Louisiana:

The answer of John McDonough, a citizen of the State of Louisiana, to the petition of Richard Raynal Keene, styling himself a citizen of the State of Maryland, shows that (should the plea to the jurisdiction herein filed be overruled) he denies all and singular the allegations in the said petition contained, and avers that the said Richard Raynal Keene has no title whatever to the land in question. That if any such adjudication, as is pretended by said Keene, ever was made, that the same was afterwards annulled. Further, this respondent pleads that he is the true and legal owner of the said tract of land by good and valid titles, and that he has had possession under the same for thirty years and upwards: Wherefore, he pleads the prescription of 10, 20 and 30 years, that the said land may be decreed to be his property, and that he may be dismissed with costs: and, assuming his legal right, he herein reconvenes and alleges that the said Keene owes him five thousand damages in slandering his (this plaintiff's, in reconvention,) title to the said land, and in trouble and expense in and about defending this suit: wherefore, he prays judgment for said $5,000, with interest and costs, and for general relief, &c. &c.

T. F. & T. H. McCALEB,
Attorneys for John McDonough.

John McDonough, the respondent in the foregoing answer, being duly sworn, deposes and says that the facts stated in the foregoing answer are correct and true.

JOHN McDONOUGH.

Sworn to, and subscribed before me, this 26th May, 1832.
B. B. WALLER, *Deputy Clerk.*

Deponent's testimony in support of his plea to the jurisdiction.

STATE OF LOUISIANA, *First Judicial District Court.*

RICHARD RAYNAL KEENE, *vs.* JAMES BROWN. } No. 8810. *Petition filed 3d April,* 1830.

To the honorable Judge of the District Court of the first Judicial District of the State of Louisiana:

The petition of Richard Raynal Keene, residing in said State, to wit, in the city of New Orleans, respectfully states that, on the twenty-first day of August, in the year 1807, in the city aforesaid, before the then notary public, Pedesclaux, your petitioner executed an instrument of conveyance or of exchange, an authentic copy whereof is hereunto annexed, in virtue of which said instrument he transferred to James Brown, a citizen and resident of said State, holding his fixed and permanent domicil in the parish of St. Charles, and to Samuel Brown, who is, or lately was, a citizen or resident of the State of Alabama, a tract of land of five acres front, with the usual depth, on the left bank of the Mississippi, at the English turn, and gave them possession of the same. That in consideration of, and as an equivalent for said tract of land, the said James Brown and Samuel Brown became bound, in virtue of the instrument aforesaid, as well separately as

jointly, to transfer to your petitioner, and to put him in possession of a lot of ground of the dimensions of sixty feet front, and one hundred and twenty feet deep in the batture, then lately adjudged to John Graner.

That the said James Brown, however, as well as the said Samuel Brown, has ever neglected to designate with precise and specific metes and bounds the lot of ground aforesaid, and to give to your petitioner possession or seisin of the same. That the said James Brown, being separately and individually bound as aforesaid to give to your petitioner possession or seisin of said lot of ground in manner as aforesaid, or to pay to him the first price thereof, at or according to the present or actual value of said lot, the said price to be estimated at the medium between the *maximum* and *minimum* value of lots at present of the dimensions aforesaid in or upon said batture, which said medium value your petitioner graduates at, and avers to be fifteen thousand dollars.

Wherefore, your petitioner prays that the said James Brown be cited to appear, and condemned to give to your petitioner possession or seisin of said lot of ground, in manner or with metes and bounds as aforesaid, or, on failure thereof, to pay to him, your petitioner, the said price or sum of fifteen thousand dollars, together with such other relief as the nature of his case may in justice require; and your petitioner, &c.

(Signed) RICHARD RAYNAL KEENE, *P. P.*

And afterwards, to wit, on the 1st day of June, 1832, the following entry was made upon the minutes of the said court, to wit:

FRIDAY, *June 1st*, 1832.

The court met pursuant to adjournment. Present, the honorable Samuel H. Harper.

RICHARD RAYNAL KEENE,
vs.
JOHN MCDONOUGH.

This being the day for which this cause had been regularly set for trial, was called; and the defendant having prayed that the fact as to the plaintiff's citizenship be inquired into by the country, thereupon came the following jury, to wit: J. J. Hall, François Heard, Charles Gresmare, François Ruffiac, Joshua Hyde, Valcure Wiltz, W. H. Ireland, Stebbins Fisk, Jerome Bayou, E. Mainere, Louis Bourgeois, and E. Cassard, who were duly sworn well and truly to try the issue joined between the parties; and after having heard the evidence and arguments of counsel, retired to consider of their verdict, and shortly returned with the following, to wit: "the jury find that the plaintiff is not a citizen of the State of Louisiana. New Orleans, 1st June, 1832. J. D. Hyde, foreman."

And by consent of all parties, (being present,) ordered that this cause be set for trial for to-morrow at 10 o'clock A. M., upon its merits.

Exhibit marked B.

Copy petition. Señor Gobernador: Don Thomas Durnford y Don Felipe Hicky, albaceas testamentarios vel difunto Don Francisco Poussett, con el mas profundo respete, ante VS. parecemos y decimos que Don Ricardo Rayn. Keene quien compró la habitacion de dicho difunto, en precio de quatro mil quinientos y cincuento pesos pagaderos á diversos plazos no ha

cumplido las condiciones de la venta; no ha satisfachio seiscientos pesos que la succesor del otro. Poussett adendaba á la de Don Juan Joyce y Don Juan Turnbull, la quel debia entregar á Don Carlo Norwood, y no ha dado tampoco la fianza que habia permetido en seguridad del pago de la dicha habitacion. En estar virtud suplicamos á V. S. Se siera declarar por venta, ningun valor ni efecto la venta hecha á favor del referido Ricardo Raynal Keene ausente fuera de la colonia, por las razones expuestos, y autorizamos á rendada á otro sugete quien nos dara las seguridades convenientes, por tanto. A V.S. suplicamos se siera prover y mandar como pedimos con justicia *costas*, juvamos y para alta, &c. (Signed) Philip Hicky, Thomas Durnford.

Decree. Baton Rouge, 24 Abril de 1804. Siendo patente la inmediata ausencia del Americano Don Ricardo Raynal Keene, para los Estados Unidos (donde habia venido) luego despues de habersele rematado la habitacion del difunto Don Francisco Poussett, como *ultimo pastor* sin fianza, solo la circunstancia de la hypotheca de alta, y no habiendose presentado hasta la presente para satisfacer los pagos de los plazos cumplidos declarese *como se declara por rula la adjudicacion que* selizo á el de la referidor tierra la que se valvera á poner en renta publica con duticipos avisos del dia en que se pregonaria, y notifiquese esta providencia á los albaceas testamentarios. (Signed) Grand Pre.

Notification. El mismo dia, mes, y año, de notifico á Don Thomas Durnford el decreto antecedente el que certifico. (One flourish.)

Notification. Succesivamente de notifico á Don Felipe Hicky el decreto antecedente de que certifico. (Flourish.)

I certify the foregoing to be a true copy of the original on file in the archives of my office. In witness whereof, I have hereunto set my hand, and the impress of my public seal, at Baton Rouge, this 16th of May, 1832.

A. TESSIER, *P. Judge.*

Exhibit marked C.

STATE OF LOUISIANA, *Parish of East Baton Rouge.*

I certify that the late Thomas Durnford was duly appointed one of the executors of the late François Poussett, deceased, as it appears by the late will of said Poussett, authenticated and proven before the late Governor of Baton Rouge, Carlos de Grand Pre, deceased, on the 20th of December, 1802. In witness whereof, I have hereunto set my hand and public seal, at Baton Rouge, this 16th May, 1832.

A. TESSIER, *P. Judge.*

Answers of S. P. Moore to interrogatories.

RICHARD RAYNAL KEENE, *vs.* JOHN MCDONOUGH. } *Action of Eviction.*

By the consent of said parties, the following interrogatories to anwers shall be received as testimony in this.

R. R. KEENE.
THO. F. McCALEB.

Interrogatories to be answered by S. P. Moore, Esq.

I. Are you well acquainted with the estate belonging to the succession of François Poussett, deceased, (the same that constitutes the object or subject of this suit,) adjoining or near to Baton Rouge, consisting of from thirteen to fourteen acres front upon the Mississippi, and from sixty to eighty acres deep?

II. What was the value of said estate, a little more or less, at the following periods, to wit: 1st, in the summer of 1804; 2d, in the summer of 1806; 3d, in the autumn of 1831; 4th, in May, 1832, or at this present time?

To the first interrogatory, this respondent answers and says that he has been well acquainted with the said Poussett tract of land above alluded to for fully forty years and upwards, having particularly examined the same repeatedly. To the second interrogatory, this respondent answers and says that in 1804, it being immediately after the cession of the country to the United States, landed property was very low, from the want of confidence on the part of the ancient inhabitants of Louisiana in the new Government; and land estate being very low under the Spanish Government, it did not begin to rise in value for two years after the cession; therefore, in the summer of 1804, said land may probably have been worth no more than five to six thousand dollars; but about two to three years after it eertainly did enhance in value at least from thirty to forty per cent.—in value at least from 30 to 40 per cent. To the third interrogatory, the respondent answers that in the year 1823, the said tract of land must have been worth from 25 to 30,000 dollars (thirty thousand;) and although landed estate has fallen in value since said latter period, said land must even now be worth twenty thousand dollars.

SAML. P. MOORE.

Sworn to before me this 4th June, 1832.

B. B. WALLER, *Deputy Clerk.*

Extract of a public sale of the estate of the late Francois Poussett, deceased, which took place at Baton Rouge on the 2d of June, 1804.

En Baton Rouge á los dos dias del mes de Junio de mil ochocientos y quatro, yo el antedichos gobernador politico y militar siendo presentes los albaceas, defensor y testigos, &c. puno en venta publica, la tierra donde hacia su residencia el difunto Don Francisco Poussett, de trece arpanes de frente retre todo se profundo lindando con la tierra de Don Elias Beauregard y la de Madama Duplantier que antos era viuda de Don Juan Joyce la quel pregonado la puno Don Fergus Duplantier en cinco mil quatrociento y uno pesos, y Don Miguel Mahier en cinco mil quinientos pesos, y no habiendo quien pusiera mas, y siendo las doce del dia se rematò y adjudico la referido tierra á Don Miguel Mahier en el citado precio de cinco mil y quinientos pesos siendo sufrador Don Thomas Durnford, y lo firmame con albaceas defensor y testigos. Carlos de Grand Pre, Michel Mahier, Thomas Durnford, Philip Hicky.

I certify the foregoing to be a true extract of the public adjudication of said estate on file in the record of my office in original. In witness whereof, I have hereunto set my hand and public seal, at Baton Rouge, the 31st of August, 1830.

A. TESSIER, *P. Judge.*

Copy. Sepran quiento esta carta viera, como yo, Don Miguel Mahier, cirujano empleado por el Rey en el distrito de Baton Rouge, otorgo que orendo realmente y con efecto en Don Thomas Durnford, del comercio á Nueva Orleans, aqui presente una tierra situado en dicho distrito como á una multa al fin, de este fuerte, sobre el margin oriental del rio Mississippi, de trece arpanes de frente á dicho rio, sobre toda se profundidad lindando por una parte con tierras de Don Elias Beauregard, y de otra con la de la Fra. Duplantier, ante vinda de Don Juan Joyce, la misma que he adquierdo en la venta publica de los biene de la testamentaria del difunto Don Francisco Foussett en que me ha sido remetado *en dos del mes de Junio de mil ochociento y quatro*, dicha tierra asi rendida libre de grevamer á hypotheca por la suma y cartidad do cinco mil y quiniento pesos de contado que reconozco haber recibido por habiendo el comprador entregado á mi voluniad, de que le doy aqui formal recibo, mediante lo qual me aporto de del derecho de propiedad, util dominio y señoria que á dicha tierra habia y tenia y todo lo cedo y trespaso á favor del comprador, ó quien su causer hubiere para que la posea venda canubie ó enagene á su voluntad como cosa propia, debiendo se visto haber adquesilo su posesion sin que necesito de otra prueba do que le relevo obligandame á la eviccion y saucamiento de esta venta en quanto por derecho se requiera y por no ser de presente la entrega, renuncio á las cosas no visto no recibido y non numerata pecunia, dolo y demas del caso, doy poder á las justicias de S. M. para que uno á prenien á su cumplimiento con el vigor de sentencia consentida y pesada en autoridad de cosa juzgada, sobre que renuncio á todo fuero derecho privilegio, y ley de mi favor, con la general que lo prohibe, &c. á estando presente el otorganisento de esta escritura yo, Don Thomas Durnford, la acepto á mi favor y me doy por entregado á mi voluntad de la referida tierra mediante haber pagar de centado el rendador *los una y cantidad de cinco mil y quinientos pesos* en que me vanudido. En cuyo testimonio es fecha la carta en Baton Rouge á los veinte y *seis dias del mes de Julio de mil ochocientos y seis anos.* Don Carlos de Grand Pre, colonel de los reales exercitos, gobernador militar y politico de la plaza y distrito de Baton Rouge, haciendo funciono de escribano publico, por no haberlo, doy fi conozco á los le organtes que lo firmaron con Don Thomas Estevan, teniente del regimiento de la Louisiana, y Don Antonio Gras, del comercio de esta plaza; testigos presente Michel Mahier, Thomas Durnford, Carlos de Grand Pre, Thomas Estevan, Antonio Gras.

I certify the foregoing to be a true copy of the original act on file in the archives of this parish. In witness whereof, I have hereunto set my hand, and the impress of my public seal, at Baton Rouge, this 21st of August, 1830.

XH. TESSIER, *P. Judge.*

Before Felix de Armas, notary public in and for the city of New Orleans, State of Louisiana, United States of America, and in the presence of witnesses hereinafter named and undersigned, personally came and appeared Thomas Durnford, of this city of New Orleans, who doth by these presents grant, bargain, sell, assign, transfer, and set over, now and for ever, with promise of warranting of all trouble, gifts, alienations, debts, mortgages, evictions, and other encumbrances whatsoever, unto John McDonough, of the parish of New Orleans, here present, and accepting purchaser for himself, his heirs, and assigns, to wit: 1st, a tract of land situated at

Barrataria, having thirty acres, more or less, in front on the Bayou Barrataria, by one hundred and ten acres, more or less, in depth, it being the whole of the tract bought by the said Thomas Durnford at sheriff's sale on the 7th of August, 1820, seized as the property of J. B. Degruys; 2d, a tract of land situated in the district of Baton Rouge, on the left bank of the river Mississippi, near the town of Baton Rouge, having about fourteen acres, more or less, in front on the said river, by a depth of 80 acres, bounded on one side by the lands belonging to Ch. Duplantier, and on the other by lands late the property of M. Beauregard, said tract of land having been purchased by the said Thomas Durnford at public sale in Baton Rouge on the 31st December, 1804; 3d, a lot of ground in the suburb Annunciation designated as No. 8, in square No. 39, having 60 feet front on Constance street, by 120 feet on Derard street, with the buildings thereon, said lot bought by the said Thomas Durnford at sheriff's sale on the 3d April, 1821; 4th, a piece of land containing two lots, less by about three feet, with all improvements thereon, suburb Lacunse, fronting on Tcheupetoulas, Lacunse, Religieuses (sinnes) streets, and lots and improvements bought by the said T. Durnford at sheriff's sale on the 30th of October, 1813. The whole property known to the said purchaser, who doth declare to be contented and satisfied, and requires no further description. The present sale is made for and in consideration of the total sum of *twelve thousand and six hundred dollars*, to wit: four thousand dollars for *the tract of land situated in the district of Baton Rouge*, $500 for the lot in the suburb Annunciation, and one thousand and six hundred dollars for the piece of the suburb Lacunse. And as the said vendor is well and truly indebted unto the said John McDonough of a larger sum than the amount of the present sale, they, the said vendor and vendee, do accept, release, and discharge each other of the said sum of twelve thousand and six hundred dollars, to wit, the said vendor in favor of the vendee, for the price of the said premises, and the said vendee in favor of the said vendor in part payment of the sum due to him by the said vendor as per account between them, settled on the 17th June now last past, and by means of the present compensation and of that made by the act passed between the same parties before the notary undersigned on the fourth instant, the said Thomas Durnford is and remains debtor to the said John McDonough of the sum of nine thousand seven hundred and sixty-two dollars, being the balance of all accounts between them, which is acknowledged and declared hereby by both contracting parties—possession of the said premises being taken and acknowledged by the said purchaser. According to the certificate of the recorder of mortgages in this city, bearing equal date herewith, there is no mortgages existing against the vendor on the premises hereby bargained and sold. Done and passed in the city of New Orleans, in the office of the said notary, on this 10th day of October, A. D. 1823, and the 48th of American independence, in the presence of Louis A. Vermenille and Louis Ferand, both witnesses hereto required, and domiciliated in this city; and the said contracting parties have hereunto set their hands, together with the notary and witness aforesaid.

(Signed) THOMAS DURNFORD.
JOHN McDONOUGH.

L. A. VERMENILLE.
L. FERAND.

FELIX DE ARMAS, *Notary Public.*

I certify the foregoing to be a true copy of the original on record in my office this 19th day of August, 1830.

FELIX DE ARMAS, *Notary Public.*

And afterwards, to wit: on the 2d day of June, 1832, the following entry was made upon the minutes of said court in the said cause, to wit:

UNITED STATES COURT, *Saturday, June 2d*, 1832.

The court met pursuant to adjournment. Present, honorable Samuel H. Harper.

RICHARD RAYNAL KEENE, *plaintiff,*
against
JOHN MCDONOUGH, *defendant.*

The trial of this cause having been continued and set for trial for this day upon its merits, was called, taken up, and argued by counsel, upon all which the court took time to consider.

And afterwards, to wit: on the 27th June, 1832, at a court of the United States held for the eastern district of Louisiana, the following final judgment was entered upon the records of the said court in the said cause, to wit:

WEDNESDAY, *June 27th*, 1832.

The court met pursuant to adjournment. Present, honorable Samuel H. Harper.

RICHARD RAYNAL KEENE, *plaintiff,*
vs.
JOHN MCDONOUGH, *defendant.*

The court having maturely considered and examined this cause upon the evidence, exhibits on file, and arguments of counsel, doth now adjudge, order, and decree, that the plaintiff's petition be dismissed.

Opinion of his honor Samuel H. Harper, judge, &c. Read by him in the said cause at the time of the rendition of the foregoing decree, to wit: 27th June, 1832, and which was put on file among the other papers in the said cause at the request of the parties.

RICHARD RAYNAL KEENE, *plaintiff,*
against
JOHN MCDONOUGH, *defendant.*

This is an action brought to recover a tract of land in the vicinity of Baton Rouge, now in the possession of the defendant. The plaintiff states that, on the 22d May, 1803, in virtue of a lawful purchase at public sale, duly and legally made by Don Carlos de Grand Pre, governor of the port and establishment of Baton Rouge, then under the Government of Spain, he became the owner and proprietor of a tract of land appertaining to the succession of one Poussett, then deceased, containing 13 arpens front by about sixty in depth; that the defendant has since acquired an unlawful possession of the land, and continues to hold the same in bad faith: he therefore prays that the defendant be compelled to surrender and deliver to him possession of

said land, and also to pay to him damages for the unlawful detention. In support of his claim, the plaintiff has produced a written adjudication of the land at auction made by Grand Pre, dated 22d May, 1802, (probably a mistake in the copy for 1803,) in which it is stated that the plaintiff, being the highest bidder, the property was struck off to him at the price of $4,550; that having no security to offer at the time, it was agreed that he should give a mortgage on the land until he should furnish other security, and that he should pay in New Orleans $600 to Thomas Durnford, one of the testamentary executors of Poussett: when he was to pay the balance does not appear. To this arrangement the executors, the *defensor* or attorney of the heirs of Poussett, G. Grand Pre, (the judge and auctioneer,) and the purchaser himself, assented and signed the *proces verbal* now exhibited. In opposition to this title, the defendant produces a petition of the executors of Poussett addressed to Gov. Grand Pre, stating, in substance, that the plaintiff had absented himself from the country without having complied with the conditions of the sale made to him, and praying that it might be rescinded or annulled, and the land again exposed to public sale. Gov. Grand Pre granted the prayer of this petition, by rescinding the sale, and offering the land a second time at auction, which took place on the 2d June, 1804, when one Michel Mahier became the purchaser at the price of $5,500, who gave Thomas Durnford, one of the executors, as his *fiador* or security, to which the said Mahier afterwards, to wit, on the 26th July, 1806, sold it for the same sum of $5,500; Durnford, on the 10th October, 1823, sold the land to the *to this* defendant for the price of $6,500, through whom the plaintiff claims title to this land. It does not appear, nor is it alleged, that the plaintiff ever paid any part of the purchase money. On these facts, the defendant pleads, 1st, that he is the true and lawful owner of the property, in consequence of the sale to the plaintiff having been annulled by competent authority, and of the proceedings consequent thereon; and, 2d, that he has acquired a title to the lands in question by prescription. To these pleas, the plaintiff replies in argument that the act of rescision of the sale done in the manner and form as it was, is *illegal and void;* and that the defendant has no title by prescription, inasmuch as he is a possessor in bad faith, and holds under a fraudulent and illegal transfer. The plea to the jurisdiction of the court, alleging that the plaintiff as well as the defendant is a citizen of Louisiana, was not sustained by the jury; and neither party having prayed for a trial by jury on the merits, the cause, according to the practice in this State, submitted to the decision of the judge alone. Before deciding any case on its merits, the courts of the United States are bound to inquire into their right to take jurisdiction of it. It has been clearly settled, both in England and in the United States, that the grounds of a foreign judgment may be examined to a certain extent. It is laid laid down in 1 Starkie, part 2, page 214, "that proceedings upon which a foreign jndgment has been obtained are, to a certain extent, open to examination, for the purpose of ascertaining whether the judgment has been *fairly* obtained and pronounced by proper authority." This doctrine has been recognized in the case of Bassell vs. Briggs, 9th Mass. Reports It has also been acknowledged in a variety of cases in Pennsylvania, New York, and several other States. Notwithstanding the full faith and credit which the constitution of the United States declares "shall be given in each State to the public acts, records, and judicial proceedings of every other State;" it has been judicially settled, "that if a court of any State should render a judgment against a man not within the

State, nor amenable to the jurisdiction of its courts, if that judgment should be produced in any other State against the defendant, the jurisdiction of the court might be inquired into, and, if a want of jurisdiction appeared, no credit would be given to the judgment." But the case is otherwise as respects domestic judgments, or those rendered by a competent court in the same State within which they are sought to be set aside. Were courts of concurrent jurisdiction permitted to examine the grounds of each other's decision, there would be no end to litigation. In the cases of Frey vs. Patton and wife, and of Decker's executors vs. Bradford's heirs, reported in 4 Martin, pages 301 and 310, the Supreme Court of this State decided that a judgment rendered in Baton Rouge before the cession, (and of course since,) is not a foreign judgment." There is such a striking coincidence between those cases and that I am now considering, that I am surprised the counsel for the defendant did not cite them to the court. In these cases, as in this, the judgments were rendered in the tribunal of the Gov. of Baton Rouge before the Americans took possession of that part of the country. "There also, as here, a copy of the Spanish record was certified by the parish judge, who became the keeper of the public archives of that district after the change of government." In the first of these cases the court say, what I emphatically say in this case, that the record does not exhibit a very correct and formal course of proceedings in the Spanish tribunal. "It shows, however," say they, "that judgment was there rendered by a competent authority of a place which has since fallen within our jurisdiction; the grounds on which it was given, say they, cannot now be inquired into, not being a foreign judgment." They observe, "it does not appear that it was appealed from, or in any manner suspended or annulled." If these decisions be founded in law, they are decisive of the question before me. Although they may not be absolutely binding on this court, yet I think the principle on which they proceed is both sound and legal, and appears to me to be in accordance with the decisions in the case of Hyllons' lessee vs Brown, 1 Wash, C. C. R., where it is said, "whether a judgment is erroneous or not, is immaterial: when it comes collaterally before the court, as when it serves for the foundation of a conveyance of land made under it to the party desirous of availing himself of the error, must have the judgment reversed in a proper manner: that is to say, in case judgment is rendered against him without notice, (as in this case,) his remedy is by application to the court in which the judgment was obtained." 1st Peters, C. C. R. The plaintiff might, in the case before me, have appealed to a higher tribunal, or he might have brought an action of nullity; for it is in evidence that he resided in New Orleans after the proceedings took place of which he complains up to the latter end of the year 1807, and now, when the matter is stirred for the first time, it is brought collaterally before the court. In the case of Wise vs. Slocum, 3 Cranch, p. 300, the Supreme Court of the United States say "the judgments of a court of competent jurisdiction, *although obtained by fraud*, have never been considered as absolutely void, and therefore all acts performed under them are valid so far as respects third persons." Here the defendant is a third person, and therefore, according to this doctrine, if I were to examine the grounds of Grand Pre's judgment, and should find it to have been fraudulently or collusively obtained, as was urged at the bar by the plaintiff, still it could not injuriously affect the claim of the defendant. Having arrived at this conclusion, I am precluded from considering the plea of prescription; for, whether that plea be tenable or not, much depends on

the validity of the original proceedings before Gov. Grand Pre. The case of Gonzales vs. Sanchez, &c. 4 Martin, N. 5. p. 657, has been cited by the plaintiff to show that the Supreme Court of this State did investigate the grounds of a domestic judgment, and set aside an ordinance of a Spanish Gov.: that case, however, is not inconsistent with the doctrines contained in the other two cases decided by that court, and already alluded to; for it does not show that the court inquired into the validity of the ordinance, but denied that it had any existence, neither the original nor a copy of it having been produced. Whatever opinion I may privately entertain of the original proceedings had in this case, I think I have no legal right to inquire into their proceedings had in this case. The decree of the Spanish Gov. being in favor of the defendant's title, and made by a competent tribunal within the limits of this State, judgment must be given for the defendant, and the plaintiff's petition must be dismissed.

Petition for writ of error filed by the plaintiff, the said Richard Raynal Keene, 1st July, 1832.

To the honorable Samuel H. Harper, Judge of the District Court of the United States for the Eastern District of Louisiana:

The petition of Richard Raynal Keene respectfully showeth, that the petitioner, conceiving that the judgment given by this honorable court, June 27th, 1832, in the suit in which he is plaintiff, and John McDonough is defendant, involves error, inasmuch as the Spanish proceedings, or proceedings of a Spanish functionary under the Spanish flag, in the year 1804, as referred to in said suit, were illegal and fraudulent, and ought to have been declared null and void. Therefore, he, the petitioner, in order to the re-examination and reversal of said judgment by the Supreme Court of the United States, prays for the allowance of a writ of error.

RICHARD RAYNAL KEENE, *P. P.*

Judge's order thereon.

Be it so, on the appellant's giving bond in the sum of five hundred dollars, conditioned according to law, with Samuel P. Moore his security.

SAML. H. HARPER,
Judge U. S. for Louisiana.

EASTERN DISTRICT OF LOUISIANA, *ss.*

I, Byrd B. Waller, deputy clerk of the district court of the United States for the eastern district of Louisiana, do hereby certify that the foregoing twenty-three pages contain a true and faithful transcript of the records and process, together with all things relating thereunto, in the case wherein Richard Raynal Keene is plaintiff, and John McDonough is defendant in said court, as fully as the same now remains on file in said court.

In testimony whereof, I have hereunto set my hand, and affixed the [L. S.] seal of the said court, at the city of New Orleans, this 20th day of July, 1832, and in the 57th year of the independence of the United States.

BYRD B. WALLER, *Deputy Clerk.*

UNITED STATES OF AMERICA:

I, Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana, do hereby certify that Byrd B. Waller, who has certified the foregoing transcript, is now, and was at the time of his so doing, deputy clerk of the said court, and that to his official attestations as such full faith and credit are due; and, further, that the attestation to the said transcript is in due form.

Given under my hand and seal, this 2d day of August, 1832, at the city of New Orleans.

SAML. H. HARPER. [SEAL.]